IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9518 OF 2004

Shri Dhananjay Natha Lohar & anr. .. Petitioners.

v/s.

State of Maharashtra and ors. .. Respondents

Mr.S.P.Kadam for the petitioners.

Mr.R.G.Ketkar for the respondent No.3.

Mr.B.V.Phadnis for the respondent No.5.

CORAM : R. M. LODHA AND R.S. MOHITE, JJ.

DATED : 21st April 2005

P.C.

Heard Mr.S.P.Kadam, the learned counsel for the petitioners and perused the writ petition and the documents annexed thereto.

2. The first petitioner claims to have been appointed as Lecturer in Botany by the respondent No.4 on 6.2.2000. The second petitioner claims to have been appointed as Lecturer in Zoology on 25.11.2002 by the respondent No.4. The petitioners claim to have secured more than 55% of marks in the concerned subjects at post-graduate level. Admittedly, they have not passed examination in National Eligibility Test conducted by University Grants Commission or approved eligibility test at

State level (NET/SET).

3. The petitioners have prayed for the following reliefs:-

(a) Rule may be issued;

(b) That by an appropriate writ, order, direction in the like nature it may be declared that the government resolution no.NGC-1201/11815/[38]/01/UE-4, dt. 18.10.2001 issued by the respondent no.1 State of Maharashtra as illegal and the same may be quashed and set aside;

(c) Pending the hearing and final disposal of present petition the effect, operation of the impugned G.R.dt.18.10.2001, may kindly be stayed;

(d) Pending the hearing and final disposal of present petition the respondent nos.3 and 4 may be directed to not to terminate the services of petitioners on the basis of G.R. dt.18.10.2001;

(e) That pending the hearing and final disposal of present petition the respondent no.4 management be directed to not to conduct interviews for the posts of held by the present petitioners and or to effect any appointment on the post held by the present petitioners;

(f) Ad-interim relief in terms of prayer clause (c), (d), (e) above may be granted;

(g) Any other and further relief as this Hon'ble Court may deem fit and proper may be granted;

4. The only substantive relief, thus, prayed by the petitioners is that the Government resolution

No.NGC-1201/11815/[38]/01/UE-4, dated 18.10.2001 issued by the respondent No.1-State of Maharashtra be declared illegal and the same may be quashed and set aside. Other prayers made in the writ petition as noticed above relate to interim reliefs only. The legality and validity of the Government resolution dated 18.10.2001 with regard to which declaration is sought by the petitioners came up for consideration before the Division Bench of this court (Aurangabad Bench) in the case of Vishwaprakash s/o.Laxman Sirsath and ors. v. State of Maharashtra and ors., 2003(2) Mah.L.J.

176. In paragraphs 25 and 26 of the report, the Division Bench observed thus-

> "25. The next sub-clause of clause 2 viz. sub-clause (b) states that those lecturers who are not successful in obtaining the NET/SET qualifications by December, 2003 will be continued in service till their retirement and except the annual increment they shall not be entitled for any other benefits like financial benefits, promotion, senior grade or selection grade. It further states that till their retirement they shall be continued in the pay scale of Rs.8,000-13,5000. We certainly find fault with this clause. When the Government has adopted the Regulations as framed by the Commission and if the Commission does not provide for such a clause in its Regulations, the State Government cannot deviate from the said Regulations if the appointees upto 11th December, 1999 failed to obtain the NET/SET qualifications by December, 2003. Undoubtedly they continued to be unqualified to hold the post of Lecturer and they cannot be continued beyond December, 2003. The concession granted by the State Government in this clause is

contrary to the Regulations framed by the Commission. In case there are institutions/universities who do not want to be covered under the U.G.C. Act, the position would be different but the Government Resolution dated 18th October, 2001 is in respect of all those aided, unaided colleges/institutions covered under the U.G.C. Act. Though education is a subject in the concurrent list i.e. List III under the Seventh Schedule (Serial No.25), the State Government's power in that regard is subject to the provisions of Entry 63,64, 65 and 66 and List-I under the said Schedule. The Government adopted the 2000 Regulations framed by the Commission in toto vide Government Resolution dated 13th June, 2000 and retrospectively from 4th April, 2000. Under these circumstances, the Government's decision of granting concession, as set out in clause 2(b) of the impugned Government Resolution, cannot be sustained.

26. The impugned clause i.e. clause 2(e) in the Government Resolution dated 18th of October, 2001, states that all the appointees to the post of Lecturer, whose appointments are after 11th December, 1999 (who have been classified in the three different groups, in this judgment) would not be eligible for the concessions granted in sub-clause (a) as well as (c) of clause 2 and they are liable to be removed from service before the completion of their probationary period. None of the petitioners, who are before us, have been confirmed in service before the impugned Government Resolution was issued. The probationers do not have a vested right of being confirmed in service and more so when they do not meet the requirements of prescribed qualifications for appointment to the post which they hold. Vide Government Resolution dated 11th December, 1999 the State Government had made known its policy in no uncertain words to all the concerned, including the universities and colleges/institutions and stated that the minimum qualifications required for the post of Lecturer, Reader, Professor, Assistant Director of Physical Education, Deputy Director of Physical Education, Director of Physical Education, Assistant Librarian, Deputy Librarian, Librarian and

Registrars would be those as prescribed by the Commission and accepted by the State Government, from time to time. This resolution had also referred to the scheme formulated by the Commission vide letter dated 24th December, 1998 wherein the minimum qualifications were stipulated for the post of Lecturer under clause 4.4.0. These qualifications were set out in the following words:

> "Good academic record with at least 55% of marks or an equivalent grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F at the Master's degree level in the relevant subject from an Indian University or equivalent degree from a foreign university.
>
> Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the U.G.C."

By the Resolution dated 11th December, 1999 the scheme of 1998 framed by the U.G.C. was adopted and followed in toto, including the qualifications for the post of Lecturer. In view of this announcement of the State policy the universities or colleges/institutions were not allowed to appoint candidates to the post of Lecturers who did not possess the NET qualifications or its equivalent from 12th December, 1999 unless these appointments were covered under the first proviso to clause 2 of the 1991 Regulations. Even when the Government issued its Resolution dated 13th June, 2000, adopting the 2000 Regulations framed by the Commission, there was no concession granted, except the concession in the first proviso to clause 2 therein and, therefore, in respect of the appointments made after 13th June, 2000 also the universities and colleges/institutions were under an obligation to ensure that the candidates appointed to the post of Lecturer did possess the qualifications of NET/SET unless the Commission had granted prior approval within the ambit of the first proviso to clause 2 of the 2000 Regulations. Same is the case in respect

of those appointees after 13th of June, 2000 till 18th of October, 2001. None of the appointees in these three groups fulfil the eligibility conditions in respect of the qualifications and, therefore, they obviously stand in the category of unqualified candidates or ineligible candidates.

Does it mean that every one of them is liable to be removed from service during the probationary period or thereafter. This question cannot be answered in general terms on the face of the relaxation granted under the first proviso to clause 2 of the 1991 Regulations as well as 2000 Regulations. It would be, therefore, necessary to examine each case under this proviso and those who did not satisfy the requirements therein must obviously vacate the posts. We deem it appropriate to give these clarification in view of the language of sub-clause (e) of clause 2 of the impugned Government Resolution dated 18th October, 2001. It would be necessary for the concerned university or the college/institution to ascertain whether the appointee concerned is covered by the benefit under the first proviso to clause 2 of the 1991 Regulations or 2000 Regulations before taking the final decision of retention or removal as the case may be. The State Government's decision impugned before us, cannot be read in isolation and it must be read in conjunction with the 1991 as well as 2000 Regulations. A particular university or college/institution may justifiably put up a case before the Commission regarding non-availability of adequate facilities for NET/SET examination and/or inadequate number of qualified candidates in a particular subject and more particularly against the posts reserved. These parameters/prevailing conditions could be examined by the Commission which is the final authority and the Commission has retained the discretion for applying its mind to all these ground realities and take appropriate decision of granting concession in favour of such subjects. This discretion of the UGC cannot be taken away by the impugned Resolution which has to be read as an announcement of the Government policy to be implemented on the lines of

> the Regulations framed by the Commission and not in isolation."

5. In paragraph 30 while rejecting the petition summarily subject to the observations aforenoted, the Division Bench passed the following order:-

> "30. In the result, the petition is rejected summarily subject to our observations that clause 2(b) of the impugned Government Resolution dated 18th October, 2001 is unsustainable and the same is quashed and set aside. We also hold that the cases of candidates appointed from 12th December, 1999 till 18th October, 2001 are required to be examined so as to ascertain the applicability of the first proviso to clause 2 of the 1991 Regulations as well as 2000 Regulations before their services are sought to be terminated by the respective universities and/or colleges/institutions."

6. The legality and validity of the Government resolution dated 18.10.2001 having already been examined by the Division Bench of this court, in our considered view, it does not require further scrutiny by us. This writ petition can be conveniently disposed of in terms of the order in the matter of Vishwaprakash (supra).

7. We, accordingly, dispose of the writ petition by following order:-

ORDER

i) Clause 2(b) of the impugned

Government Resolution dated 18.10.2001 has already been held to be unsustainable and stands quashed by the decision of this court in the case of Vishwaprakash s/o.Laxman Sirsath and ors. v. State of Maharashtra and ors. 2003(2) Mh.L.J. 176.

ii) The case of the petitioners shall be examined so as to ascertain the applicability of the first proviso to clause 2 of the 1991 Regulations passed by the University Grants Commission before any adverse order affecting the service of the petitioners is passed by the concerned institution/college.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)